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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,884	03/15/2005	Hubert Groll	2002P01282WOUS	7624

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EXAMINER

WALDBAUM, SAMUEL A

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

07/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,884

Applicant(s)

GROLL ET AL.

Examiner

SAMUEL A. WALDBAUM

Art Unit

1792

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 13-26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 19 December 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. In the response filed May 20, 2009, the applicant has added claim 26. The previous rejection is hereby withdrawn in favor the new rejection found below.

Specification

2. The amendment filed April 28, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Detail how the pre-tensed spring is related in the figure, and how that spring is supported by the basket and how the spring is attached to the handle.

Applicant is required to cancel the new matter in the reply to this Office Action.

3. The amendment filed December 19, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The newly added figure (fig. 3) and the paragraph added to the specification contain new matter. The figure and the amended specification disclose component to a dishwasher that were not disclosed before and the fact that the handle is placed on the lower dishwasher rack not the upper dishwasher rack.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 13-26 rejected under 35 U.S.C. 103(a) as being unpatentable over Scian, Luciano (EP 0855166, hereafter `166) in view of Finola et al (U.S. 5,601,195, hereafter `195) and Jacobus et al (U.S. 5,249,590, hereafter `590).

6. Claims 13, 14, 19 and 20: `166 teaches a front side of a basket (fig. 1) with a handle (fig. 1, part 6) with a fulcrum point (fig. 1, part 8, which means "the point or support which a lever pivots", www.dictionary.com, last visited January 9, 2008). `166 does not explicitly state that a door is a part of a standard dishwasher. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the handle adjustable around the fulcrum, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954). It would have been obvious to one having ordinary skill in the art at the time the invention was made to the handle explicitly

movable around the fulcrum point, since it has been held that making an old device movable with out producing an new and unexpected results involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952).

`166 does not explicitly state that a door is a part of a standard dishwasher. `590 is a standard dishwashing machine. `590 teaches a door (fig. 1, part 14) in which the dishwashing racks with multiple sides rest inside the machine compartment (fig. 1). All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, meaning that the door for the washing machine as taught by `590 is part of the standard dishwashing machine of apparatus `166.

`166 does not explicitly teach that the handle on the rack swings out when the door of the machine is opened. `195 is a dishwasher rack. `195 teaches that a member can pivot around one point and swing forward under the force of gravity after being released from being held in a vertical position (col. 2, line 10 - col. 3, line 40). All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, meaning that the fact that a object can swing forward on a pivot point due to the force of gravity after being released as taught by `195 in apparatus `166 in view of `590 to yield the predictable result of the door acting as the latch for the handle and once that the door is moved that gravity would take over and swing the handle out around fulcrum/pivot point.

7. Claim 15 and 21: '166 and '195 do not teach using a pre-tensed spring on a the handle around the pivot point. '590 is solving the same problem as the applicant of forcing the movement of a arm around a pivot point. '590 teaches using a pre-tensed spring (fig. 3, part 27) to facility movement of the arm around the pivot point (col. 2, lines 15 - col. 4 line 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a pre-tensed spring as taught by '590 in apparatus '166 in view of '195 to have moved the handle around a pivot point.

8. Claim 16 and 22: Claims directed to apparatus must be distinguished form prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). “[A]pparatus claims cover what a devices is not what a device does” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), meaning as the door closed in apparatus '166 in view of '590 and '195 in which when the door would push the handle back in to the vertical position.

9. Claim 17, 23 and 25: '166 teaches three sections a gripping section (fig. 1, the top of the handle, part 6, col. 2, line 15-57), a second section connected to the fulcrum point (fig. 1, part 10 the arm of the handle) and a third section that supports the handle (fig. 1, the area that swings down below the fulcrum point).

10. Claim 18 and 24: '166 teaches that pieces can be snap-fitted to the wires of a basked (col. 1, lines 10-40). '195 teaches using a snap fit connection around the pivot section (fig. 2, parts 9 and 12) as a means of connecting the pivot point to the rack (col. 2, lines 10 - col. 3 line 40). It would have been obvious to a person of ordinary skill in the art at the time the invention

was made to have used a snap fit connection as taught by '195 in apparatus '166 in view of 195 and '590 to have connected the handle to the wire of the washing basket.

11. Claim 26: See claims 13, 15, 19 and 21 above. '166 teaches that the handle is on the front side of the basket (fig. 1). It is obvious to one of ordinary skill in the art at the time the invention was made that the handle of apparatus '166 in view of '195 and '590 (see claims 13 and 19 above for the swing out of the handle when the door opens) that when the door is closed that the handle would move back to it original position so that when the door would be subsequently opened that the handle would swing out.

Response to Arguments

12. Applicant's arguments filed May 20, 2009 have been fully considered but they are not persuasive.

13. The applicant is first arguing that the amended figures filed April 28, 2008 does not contain new matter since the claims and the specification talk about the pre-tensed spring. Applicant is correct that the pre-tensed spring is not new matter, but how it is arranged on the basket and the handle is new matter since the original specification and the claims, thus it constitutes new matter.

14. The applicant does not present arguments to the objection to the specification as of new matter for the amendment filed on December 19, 2009 thus this objection for new matter is maintained.

15. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

16. Applicant is arguing that the prior art does not teach that the handle is movable and that it would not be obvious to one of ordinary skill to make the handle moveable. '166 teaches that the handles is capable of moving around the fulcrum col. 3 lines 5-10, where the handle key is to provide a means for pulling out the basket from the washing machine which is the key part of the invention. '166 also teaches that the handle for the basket can be modified without departing from the scope of the invention (col. 3, lines 20-30). Since '166 teaches that the handle is moveable/rotatable around it fulcrum point, it is within the skill level of one ordinary skilled in the art at the time the invention to allow the handle to rotate on it fulcrum, and still keeping within the scope of the invention of having a handle attached to the front of the basket to allow the user to grab the handle to pull out the basket.

17. Applicant is arguing that the examiner can not rely on case law to make the handle movable. A commonsense reason by having the handle movable (see above rejection for moveability of the handle) would allow more space for a user to grab the handle without hitting the side of the basket with their hand. This would not be an unexpected result by allowing the handle move away from the basket it would create more room around the grip portion thus allowing the user to grab the handle, which is not unexpected.

18. Applicant is arguing criticality of some elements of the claimed invention but has provided no evidence only conclusory arguments that would have not allowed one of ordinary skill in the art to modify the prior art as stated in the above rejection. Therefore these arguments

carry little weight and the examiner maintains his position that it within the skill level of one of ordinary skill in the art to modify the prior art as stated in the above rejection.

19. In response to applicant's argument that '590 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, '590 is in the same field endeavor as the applicant, dishwashers and is solving the same problem as the applicants of making a object that is attached to a dishwasher basket moveable by a pretensed spring.

20. In response to applicant's argument that '195 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, '590 is in the same field endeavor as the applicant, dishwashers and is solving the same problem as the applicants of making a element of a dishwasher washer basket pivotable.

Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL A. WALDBAUM whose telephone number is (571)270-1860. The examiner can normally be reached on M-TR 6:20-3:50, F 6:30-10:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. A. W./
Examiner, Art Unit 1792

/FRANKIE L. STINSON/
Primary Examiner, Art Unit 1792